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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

OCT 28 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Application of)

GAF BROADCASTING COMPANY, INC.)

File No. BRH-910201WL

For Renewal of License for FM)
Radio Station WNCN, New York, NY)

To: The Commission

OPPOSITION TO MOTION TO STRIKE

Class Entertainment and Communications, L.P. (Class), by its attorneys, now opposes the "Consolidated Response and Motion to Strike" filed by GAF Broadcasting Company, Inc. (GAF) on October 15, 1992 to the extent GAF's pleading seeks to strike a portion of Class' September 29, 1992 "Comments on Joint Request For Approval of Settlement Agreement".

GAF argues that a portion of Class' comments must be stricken because they are allegedly an "unauthorized request for hearing issues". GAF Motion, P. 8. GAF's request is baseless because it fundamentally misapprehends Class' argument and Class' procedural rights.

In its comments, Class did not make any request for hearing issues that had not previously been made. Instead, it demonstrated that the Commission was required to give full consideration to the arguments made in the NAACP's petition to deny concerning GAF's EEO program. GAF's reply utterly failed to deal with the cases cited by Class in support of its arguments. There is nothing improper about Class arguing that

all arguments made against GAF's qualifications must be fully considered.

Class did not waive its rights to make any arguments concerning GAF's EEO program by not including those arguments in its petition to deny. Under Section 1.229 of the Commission's rules, Class could have waited until after designation and filed a petition to enlarge issues against GAF. Other parties, however, raised GAF's EEO record in petitions to deny. Class therefore has every expectation that rulings will be made on GAF's EEO record in the hearing designation order. Since Class' application is mutually exclusive with GAF's renewal application, Class has a statutory right to challenge GAF's qualifications. Under those circumstances, it is entirely appropriate for Class to urge a full and thorough review of GAF's EEO program. GAF's motion to strike must therefore be denied.

GAF's motion contains much more self-serving rhetoric than substance. GAF repeatedly speaks of Class "cynically exploiting" the NAACP's concerns for its own purposes and presupposes that Class has lost "its only 'issue'". Despite GAF's self-serving rhetoric and its protestations that it is not trying to avoid full inquiry into its record, GAF is clearly trying to avoid such an inquiry. Class has every intention of proving at hearing that GAF's overall record is such that a grant of GAF's application would not serve the

public interest, convenience and necessity.¹ GAF's meaningless rhetoric provides no basis for striking Class' legitimate comments.

Accordingly, Class asks the Commission to deny GAF's motion to strike.

Respectfully submitted,

CLASS ENTERTAINMENT AND
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Date: October 28, 1992

¹ Class has also appealed to the United States Court of Appeals the Commission's order denying those portions of Class' Petition to Deny relating to securities fraud by GAF's parent and James Sherwin. See Class Entertainment and Communications, L.P. v. FCC, Case No. 92-1269.

CERTIFICATE OF SERVICE

I, Linda Gibson, do hereby certify that on the 28th day of October, 1992, a copy of the foregoing "Opposition To Motion to Strike" was sent first-class mail, postage prepaid to the following:

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